

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION**

RightCHOICE Managed Care, Inc., *et al.*,

Plaintiffs,

v.

Hospital Partners, Inc.; Hospital Laboratory Partners, LLC; LifeBrite Laboratories, LLC; RAJ Enterprises of Central Florida, LLC d/b/a Pinnacle Laboratory Services; Empower H.I.S. LLC; David Byrns; and Jorge Perez,

Defendants.

CIVIL ACTION NO.
5:18-CV-06037-DGK

**SUGGESTION SUPPORTING MOTION FOR LEAVE TO AMEND FIRST
AMENDED COMPLAINT**

Pursuant to Federal Rule of Civil Procedure 15(a)(2), Plaintiffs respectfully request leave to amend their First Amended Complaint.

Argument

Federal Rule of Civil Procedure 15(a)(2) provides that: “[A] party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.” Specifically, “[l]eave should normally be granted absent good reason for a denial.” *Dean v. Am. Honda Motor Co.*, No. 17-03069-CV-S-DPR, 2017 U.S. Dist. LEXIS 218188, at *1 (W.D. Mo. Nov. 14, 2017) (citation and quotation marks omitted). The Court “may deny leave to amend upon a showing of undue delay, bad faith or dilatory motive, repeated failure to cure deficiencies by

amendments previously allowed, undue prejudice to the non-moving party, or futility of amendment[.]” *Id.* (citation and quotation marks omitted).

On April 5, 2018, Plaintiffs served a Complaint [*see* Dkts. 1, 14] on one of the Defendants, thereby starting the 21-day period during which Plaintiffs could amend the Complaint as of right. *See* Fed. R. Civ. P. 15(a)(1)(B). On April 25, 2018, pursuant to Federal Rule of Civil Procedure 15(a)(1)(B), Plaintiffs amended the Complaint [Dkt. 21] as a matter of course, adding several new Plaintiffs and identifying a number of entities that had assigned their claims to Plaintiff RightCHOICE Managed Care, Inc. (“RightCHOICE”). Plaintiffs now seek leave to amend the First Amended Complaint to include additional allegations regarding the scope of the pass-through scheme at issue in this dispute, the amount of damages at issue, and to add two additional Defendants, James F. Porter, Jr. and Christian Fletcher.

James F. Porter, Jr. is the founder and manager of Defendant Hospital Laboratory Partners, LLC (“Hospital Lab Partners”). (*See* 5/16/18 Declaration of Nathaniel Moore [“Moore Decl.”], Ex. A; *see also* Proposed Second Am. Compl. at ¶ 206(a & i).) Hospital Lab Partners was served on April 5, 2018 at 9:25 a.m., and was voluntarily dissolved that same day. (*See* Dkt. 15; *see also* Moore Decl., Ex. A.) It has not yet responded to the First Amended Complaint or otherwise appeared in this case. As alleged in the Proposed Second Amended Complaint, Porter created Hospital Lab Partners to facilitate the scheme at issue in this dispute, and specifically to serve as an intermediary between

Putnam County Memorial Hospital (“Putnam”) and pass through-labs, such as Defendants LifeBrite Laboratories, LLC and RAJ Enterprises of Central Florida, LLC d/b/a Pinnacle Laboratory Services (“Pinnacle Labs”). (*See* Proposed Second Am. Compl. at 206(a & i).)

James F. Porter, Jr. is also the manager of Pinnacle Labs, which was served on April 5, 2018. (*See* Dkt. 14.) Pinnacle Labs also has not responded to the First Amended Complaint or otherwise appeared in this case. As stated in Plaintiffs’ proposed Second Amended Complaint, Porter directed the actions of Hospital Lab Partners and Pinnacle Labs as related to the fraudulent scheme, participated in the fraudulent scheme alleged by Plaintiffs, and received a portion proceeds obtained through the fraudulent scheme. (*See* Proposed Second Am. Compl. at ¶ 206(e & i).)

Christian Fletcher is the CEO, manager, and sole member of Defendant LifeBrite Laboratories, LLC (“LifeBrite Labs”). (Proposed Second Am. Compl. at ¶ 58.) As alleged in the Proposed Second Amended Complaint, Christian Fletcher controlled, directed, and had a pecuniary interest in LifeBrite Labs. (Proposed Second Am. Compl. at ¶¶ 137, 206(d).) Moreover, he conspired with Jorge Perez to participate in the pass-through scheme by agreeing to bill tests performed by LifeBrite Labs through Putnam. (Proposed Second Am. Compl. at ¶¶ 137, 206(d).)

Plaintiffs’ Proposed Second Amended Complaint also includes new allegations regarding the role of each of the Defendants and the amount in controversy. Specifically,

since filing the First Amended Complaint, Plaintiffs have discovered an additional \$20 million that Defendants billed to Plaintiff RightCHOICE for laboratory claims other than urine-drug testing. (*See* Proposed Second Am. Compl. at ¶ 5.)

This motion is brought without bad faith or dilatory motive. Allowing Plaintiffs to amend their First Amended Complaint will cause no undue delay. Indeed, none of the Defendants have responded to the First Amended Complaint, and the Court has not yet issued a scheduling order. Accordingly, Defendants will not be unduly prejudiced by allowing Plaintiffs to file a Second Amended Complaint.

Conclusion

For the foregoing reasons, Plaintiffs respectfully request leave to file their Second Amended Complaint.

DATED: June 8, 2018

By: /s/ Neal F. Perryman

LEWIS RICE LLC

Neal F. Perryman, MO Bar #43057
Michael L. Jente, MO Bar #62980
600 Washington Avenue, Suite 2500
St. Louis, Missouri 63101
T: (314) 444-7600
nperryman@lewisrice.com
mjente@lewisrice.com

-and-

ROBINS KAPLAN LLP

Jeffrey S. Gleason (admitted *pro hac vice*)
Randall Tietjen (admitted *pro hac vice*)
Jamie R. Kurtz (admitted *pro hac vice*)
Nathaniel J. Moore (admitted *pro hac vice*)
800 LaSalle Avenue
Minneapolis, Minnesota 55402
T: (612) 349-8500
F: (612) 339-4181
jgleason@robinskaplan.com
rtietjen@robinskaplan.com
jkurtz@robinskaplan.com
nmoore@robinskaplan.com

Timothy Billion (admitted *pro hac vice*)
140 N. Phillips Ave, Suite 307
Sioux Falls, South Dakota 57104
T: (612) 349-8475
tbillion@robinskaplan.com

Attorneys for Plaintiffs